

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BEFORE THE
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

- - - - -x

IN THE MATTER OF:	:	Docket Numbers
NEW YORK/NEW ENGLAND REGIONAL RTO PANEL	:	RT02-2-000
	:	RT01-86-000
	:	RT01-95-000
	:	RM99-2-000
	:	RT01-99-000
	:	RT01-100-000

- - - - -x

NORTHEAST REGIONAL PANEL DISCUSSIONS

Federal Energy Regulatory
Commission
888 First Street, N.E.
Eleventh Floor
Washington, D.C.

Tuesday, May 28, 2002

The above-entitled matter came on for teleconference,
pursuant to notice, at 10:05 a.m., Stephen P. Rodgers,
presiding.

1 APPEARANCES:

2 CHAIRMAN PAT WOOD, III

3 COMMISSIONER NORA MEAD BROWNELL

4 COMMISSIONER LINDA KEY BREATHITT

5
6 ROB E. GRAMLICH, Economic Advisor, Chairman Wood

7 LAWRENCE D. CROCKER III, Legal Advisor, Chairman Wood

8 CHRISTOPHER A. JOHN, Technical Advisor, Commissioner

9 Breathitt

10 JAMIE L. SIMLER, Technical Advisor, Commissioner

11 Brownell

12 JAMES PEDERSON, Technical Advisor, Commissioner

13 Brownell

14 CHARLES WHITMORE, Office of the Executive Director

15 MARSHA GRANSEE, Deputy General Counsel

16 KENT CARTER, Office of General Counsel

17 ELLEN SCHALL, Office of General Counsel

18 DANIEL L. LARCAMP, Director, Office of Markets,

19 Tariffs and Rates

20 WILLIAM LONGENECKER, Energy Industry Analyst, OMTR

21 SHELTON M. CANNON, Deputy Director, OMTR

22 STEPHEN P. RODGERS, Deputy Director, Tariffs and

23 Rates - East

24
25 -- continued --

KEVIN A. KELLY, Director, Policy Innovation and
Communications, OMTR

WILLIAM A. MERONEY, Group Manager, Market
Development, OMTR

DOUGLAS E. MATYAS, OMTR, Division of Tariffs and
Rates - East

KEVIN CADDEN, Director, Office of External Affairs

EDWARD M. MEYERS, Director of State Relations, Office
of External Affairs

SARAH MC KINLEY, State Relations, Office of External
Affairs

DEBORA SCHWEIKART, State Relations, Office of External
Affairs

HONORABLE GLENN N. ARTHUR, Vice Chairman

HONORABLE LINDA J. KELLY, Commissioner

DAVID GOLDBERG, Research & Policy Division

STEVEN CADWALLADER

CINDY JACOBS

HONORABLE STEPHEN L. DIAMOND, Commission

LISA FINK

DENIS BERGERON

HONORABLE PAUL VASINGTON, Chairman

HONORABLE W. ROBERT KEATING, Commissioner

```
-- continued --
```

1 APPEARANCES (CONTINUED):

2 RONALD LE COMTE

3 HONORABLE THOMAS B. GETZ, Chairman

4 HONORABLE NANCY BROCKWAY, Commissioner

5 HONORABLE SUSAN S. GEIGER, Commissioner

6 ALEXANDER LEE, Assistant to the Commissioners

7 HONORABLE MAUREEN O. HELMER, Chairman

8 DAVID BROWN, Senior Advisor, Market Surveillance

9 CAROLINE DUPOIS, Director, Technical and

10 Environmental Analysis

11 HONORABLE ELIA GERMANI, Chairman

12 DOUG HARTLEY

13 HONORABLE MICHAEL H. DWORKIN, Chairman

14 HONORABLE JOHN D. BURKE, Member

15 HANS E. MERTENS

16 SANDRA A. WALDSTEIN, Assistant to Chairman Dworkin

17 HOPE CRIFO

18
19
20 ALSO PRESENT:

21 DAVID L. HOFFMAN, Court Reporter

22

23

24

25

P R O C E E D I N G S

(10:05 a.m.)

MR. MEYERS: Good morning to everybody. This is Ed Myers. Steve Rodgers of Markets, Tariffs, and Rates, is going to run the meeting. Nora Brownell, the Commissioner, will be here the first hour; the second hour, we'll have the Chairman, Pat Wood. Emergencies have taken away our other two Commissioners; they will not be able to join us, but we're going to have a real good meeting, nonetheless. I guess you all know that Mike Dworkin, the President of NECPUC, is here in person.

MR. DWORKIN: Some folks know I was headed down; some folks know I arrived.

COMMISSIONER BROWNELL: Why don't we take attendance.

(Attendance taken.)

MR. RODGERS: We want to start with New York next.

(Attendance taken.)

MS. GRANSEE: Before we start, the last woman who introduced herself on NARUC's staff, we've really tried to be very careful in limiting these conversations to either the State Commissioners themselves or the staffs, and at other conferences, we've asked NARUC members, for example, not to participate, because this is a sort of exception to

1 our ex parte rules.

2 COMMISSIONER BROWNELL: This s Nora Brownell. We
3 don't want to be rigid, but, frankly, this model is already
4 being challenged, and we have pushed the envelope according
5 to our laws, and so we would ask you to bear with us, if we
6 interpret this rather narrowly. It's difficult, but we
7 don't want this challenged, or to have a successful
8 challenge.

9 MR. DWORKIN: Let me just understand. You were
10 concerned about participation. Are you worried about Amy
11 listening in, or are you worried about her speaking?

12 MS. GRANSEE: Again, we haven't interpreted it so
13 narrowly. You know, listening in is probably not as much of
14 a problem as actually speaking, but if it wouldn't be too
15 much of a burden, I guess I would prefer that she just not
16 participate, because, again, if we make an exception now,
17 then it makes it harder for us to try to stick by the
18 guidelines the next time.

19 I apologize, if you weren't aware of this before
20 we started, because we have been keeping sort of very rigid
21 rules, and I know that Ed and Sarah have also had to ask
22 other people not to participate.

23 MR. MEYERS: That's happened -- this is Ed Meyers
24 -- with virtually every state-federal panel we've had. In
25 fact, leading up to these panels, invariably we get several

1 calls, half dozen or more, of people requesting to join in.

2 We really regret the inconvenience to you, Amy.

3 VOICE: I've got plenty of other things to do.

4 I'll just leave it with Michael as my President. If it's

5 all right with you; that's all right with me.

6 VOICE: Does it matter that Amy works for the

7 State Commissions? She's certainly not any other person;

8 she basically works for the New England Commissions as our

9 staff person, collectively.

10 MS. GRANSEE: We've asked NARUC, people who work

11 for NARUC, not to participate, so --

12 COMMISSIONER BROWNELL: It's very tough for us,

13 and we're sorry to be rigid, but as I said, we pushed the

14 envelope here. We already have a challenge to this in

15 court, and, frankly, we want to be able to keep this going,

16 so we want to be on the strongest grounds possible.

17 VOICE: Thanks, that 's fine. I wish you well in

18 the meeting; I hope it's productive.

19 MR. DWORKIN: Amy, go off and do good things.

20 Thank you.

21 COMMISSIONER BROWNELL: We'll make Michael take

22 notes.

23 MR. RODGERS: This is Steve Rodgers with FERC

24 staff, again. For those of you that joined us late, I just

25 wanted to mention again that unfortunately Commissioners

1 Massey and Breathitt were not able to attend because of
2 last-minute emergencies that came up. But now we do have
3 Commissioner Brownell and Chairman Wood that will be joining
4 us shortly. Commissioner Brownell is here now, and Chairman
5 Wood joins us shortly, about 11:00 to participate in the
6 meeting.

7 And I wanted to also mention that the New York
8 ISO has asked me to make sure that as we refer to the North
9 -- the New York and New England ISO Cost-Benefit Study, that
10 I mention that that is a preliminary study, and while we are
11 free to talk about it, at the same time, it is not a final
12 study, and they wanted me to emphasize that. Their final
13 study, I believe, is going to be prepared for issuance in
14 about a month from now.

15 So, I wanted to ask next if there are any opening
16 statements that anybody would like to make.

17 COMMISSIONER BROWNELL: This is Nora Brownell.
18 Maybe I'll start.

19 I appreciate everyone's willingness to work in
20 this new way. It's difficult, I know, when we're on the
21 phone, but I think we -- and I hope you who have
22 participated have found it a useful way and less cumbersome
23 way, and, frankly, a more efficient way to really roll up
24 our sleeves and deal with what are incredibly complicated
25 transitional issues.

1 I know that there are concerns about cost-
2 shifting, jurisdictional issues, governance, what are the
3 cost benefits and how do we make sure that we're measuring
4 them adequately? How do we use perhaps new tools or old
5 tools like rate design to deal with some of the issues?

6 We're anxious to hear from you and work with you
7 and be responsive in way that meets all of our goals. We're
8 all after the same objective, and that is to transform
9 markets in a way that brings benefits to the consumer. We
10 share that goal and we need to keep it in front of us, no
11 matter where we sit.

12 And I think, particularly, our colleagues in New
13 England, we understand that going forward. So with that, I
14 just hope every everyone will be candid about their
15 concerns, but also about solutions.

16 I think it's easy -- certainly I spend a lot of
17 my days wringing my hands and identifying the problems. Our
18 good staff reminds me that we're here to create solutions,
19 and they're pretty smart people and often do.

20 In fact, I'm encouraging both your staff and our
21 staff, as we identify issues, to maybe just throw out some
22 potential ideas for resolving those. We've been at this now
23 for nine years. I'm getting old fast. We don't have
24 another nine years, and I think the events of the last
25 several months would illustrate that.

1 So, welcome and thank you, and I look forward to
2 hearing from you.

3 MR. DWORKIN: Well, I could probably say
4 something to match that, and then to maybe move into
5 substance. First, as to process, we all recognize that to
6 some degree, there's a lot of unknowns here, and that the
7 questions of how to best try to have a strong, healthy
8 relationship between the FERC and the states are ones where
9 there's not a perfect cookie cutter that we can just all
10 follow.

11 And as we just saw five minutes ago, sometimes
12 we're going to be surprised by each other. I think we all
13 recognize that you're making a good-faith effort, and we
14 really value that.

15 We are sometimes not happy with how the mechanics
16 work out, and sometimes I think you aren't. And my guess is
17 that over the months and the next couple of years, we'll all
18 learn more about how to do it.

19 An underlying issue that's strong in our minds
20 that I might as well be candid about is whether FERC, the
21 states, and Congress, perceive the states as just another
22 party, just another litigant, just another interest group,
23 just another vector in the vector analysis of pressures
24 pushing on FERC, or whether they perceive the states as a
25 different kind of being, one with shared public concerns,

1 shared public responsibilities, and a shared role in the
2 administration of the Power Act. It's a fundamental issue
3 that I think none of us are quite sure how to turn to the
4 practice. And you can read what the Supreme Court said a
5 few months ago and come up with as many question as answers.

6 But I think that most of us perceive a common
7 responsibility, and a significant chunk of us perceive a
8 common set of goals, if not all of us, and maybe a subset of
9 that perceives a common set of steps to take.

10 But I do want to put on the table, the thought
11 that many of us think that we aren't just another litigant.
12 We do think that we have responsibilities put on us by our
13 states, and recognized by Congress to be more than just
14 another interest group.

15 And as we do that, it makes us acute aware that
16 the task of solutions is not just a challenge from Nora, but
17 it's a reality for all of us, because we're the people who
18 see retail customers on a weekly basis, telling us about
19 their problems and their dreams, and more often, their
20 problems.

21 It means that the search for solutions is very
22 important for us, and that pragmatism is driven upon us as a
23 day-to-day reality.

24 There are five topics that you have on the agenda
25 for this meeting. One is the cost-benefit study on regional

1 transmission organizations that came out of the NERTO. And
2 I certainly accept the comment you say that the New York ISO
3 made to you, that it is preliminary, but I think there's
4 enough of it there to have some serious reactions. And,
5 particularly, I think that much of its substance is unlikely
6 to change, because it's driven by some real-world factors;
7 the analysis won't change.

8 The second one is the geographic scope of RTOs in
9 relation to New England. I think, by that, you mean
10 something very close to the third one, which is the merger
11 of New York and New England ISOs.

12 The fourth you've listed as governance of RTOs,
13 including selection of board members and independents. And
14 the fifth is market monitoring.

15 Now, we have thoughts on all five of those,
16 fairly detailed ones. And I can begin to move into them in
17 a little while, but first I wanted to see if anybody else
18 wanted to make some opening remarks before I go further.

19 MR. WELCH: This is Tom Welch from Maine, and I
20 do have -- it's sort of an opening question, because it will
21 color a good deal of how I view the particular issue of
22 geographic scope of RTOs and NERDO mergers and things of
23 that nature.

24 And I think it's a simple question, and I think I
25 know the answer, but let me ask anyway. Am I correct that

1 regardless of the particular geographic scope upon which
2 FERC ultimately settles for the organizational structure of
3 any RTO, that FERC is unlikely to waiver from it's
4 determination to eliminate seams.

5 Put another way: To the extent there is
6 inefficient dispatch of generation taking place, because
7 transactions cannot flow because of boundaries from one
8 market area to another, FERC intends to ensure that those
9 are eliminated.

10 And the particular reason I ask the question is
11 that the cost-benefit studies, however they are used and
12 however they are characterized, all seem to have as a common
13 characteristic, that it is the elimination of the barriers
14 to transactions, and not the particular organizational
15 structure which derives them pro or con.

16 COMMISSIONER BROWNELL: Tom, I think I can speak
17 for all of the Commissioners. Somebody jump in if you've
18 heard a Commissioner say otherwise, but absolutely we are
19 committed, regardless of organizational structure, to
20 eliminate seams. It strikes me that larger common
21 organizational structures make that easier, make the
22 transparency easier to manage.

23 But clearly creating a lot of organizations and
24 leaving the issues out there is counterproductive and we
25 don't intend to do that. And where we don't deal with these

1 issues in standard market design or standardized
2 interconnection or within the RTO dockets themselves, we
3 will do it, you know, on another front.

4 And I think, Pat, I know, feels quite strongly
5 about that, so where people can't identify solutions to deal
6 with these seams issues, we'll do it if we have to. Does
7 that in any way mischaracterize the thinking of the group?

8 (No response.)

9 COMMISSIONER BROWNELL: Okay.

10 MR. DWORKIN: For the crowd on the phone, I'll
11 just say that a dozen people nodded.

12 COMMISSIONER BROWNELL: Let me say this about the
13 agenda, and then any other opening comments, certainly make.
14 The agenda that we put together was based on a kind of input
15 that we heard from you.

16 Whatever it is that you want to accomplish in
17 whatever order, the agenda is yours. We are here to work
18 with you, so we don't -- this does not represent kind of our
19 dictating of what the issues are and the order in which we
20 should discuss them. So, it's yours to manage.

21 MR. DWORKIN: It's probably worth noting, from my
22 old days as a lawyer and a federal agency general counsel,
23 that we ought to stay somewhere close to the Notice
24 requirements of what's in the Notice, so I think that as
25 drafted, the five things cover most of what we want to talk

1 about, as long as we understand that standard market design
2 or good market design is part of them. So, I think we're
3 well within the Notice, but we probably can't discuss things
4 that are in no way mentioned here.

5 COMMISSIONER BROWNELL: I suspect that we've
6 covered the universe with these in the Notice, anyway. It
7 would be hard to get too far astray and not have them fall
8 under this umbrella.

9 MR. DWORKIN: In that context, then, there are a
10 few points that I think we want to bring to your attention.

11 One is that in the order of priority and
12 importance, we think that good rules matter more than
13 footprint and size. And we've thought that for a long time,
14 and, frankly, every economic study we've seen since then
15 supports it in a dollars and cents way.

16 In a quite literal way, you know, a day or a week
17 of badly functioning markets can wipe out or cost consumers
18 more than all the perceived gains of any of these footprint
19 or organizational issues. So that even a month of delay in
20 terms of getting good market rules in place is not justified
21 in terms of potential benefits of the organizational issues.

22 There is a -- and that's just a dollars and cents
23 observation. There is a second factor that we think is
24 probably more important than footprint. Broadly speaking,
25 it's usually referred to as governance.

1 By it, I think we mean the incentives and
2 capabilities of a regional transmission organization, or an
3 ISO, and the incentives and capabilities have a number of
4 aspects: One is who goes on to the management board?
5 Perhaps more importantly, the question is, who decides who's
6 retained on the management board?

7 The next one is budget. The next one is the
8 degree of stability and ability to keep staff and to develop
9 the long-term institutional expertise. Another is the
10 software capability.

11 Those issues are probably harder to document in
12 the dollars and cents way than the rules, but, frankly, they
13 probably matter more, because you can start with great
14 rules, but if you have a bad group of people administering
15 them or bad incentives, the rules would degrade over time.

16 Or you can start with mediocre rules, and if
17 you've got good incentives, they will improve over time.
18 And in each case, they're probably more important than the
19 footprint issues.

20 On the footprint issues, we have real qualms. I
21 think most of us started with one thing that we still have
22 and another thing that we may have lost.

23 Most of us have at least a theoretical liking for
24 serious, wholesale, competitive electric markets that will
25 offer a real set of incentives for lower cost production and

1 lower cost delivery to end users.

2 And I think most of us still retain that, if not
3 all of us, although, frankly, the set of constraints that
4 have to be met to have an efficiently functioning wholesale
5 market are very tight, and whether there is a solution in
6 the sense of a mathematical calculation that satisfies all
7 the constraints, is one that we -- I, at least, have said is
8 an open question, although I want, and I think most of us
9 want to see an answer found.

10 The one that we may have fallen away further
11 from, though, is that many of us began with a strong degree
12 of sympathy for larger markets and larger footprint.

13 And the economic analyses that we've seen seem to
14 suggest that the potential gains are very hard to quantify
15 as anything that is meaningful in a real sense.

16 The cost-benefit study from the Northeast RTO,
17 for example, is not only small in terms of total dollars;
18 it's very small in terms of retail delivered cost of power.
19 And the uncertainties, for example, the fact that GE MAPS is
20 a plus or minus 20-percent range in its power predictions,
21 vastly outweigh the quite small, you know, 1.5 to 3.0
22 percent gains that it shows overall, not to mention the fact
23 that the assumptions that it would take to have them
24 actually occur, are ones that are at best optimistic, and
25 most of them also have very little to do with organizational

1 structure.

2 So, we came from some serious sympathy to more
3 and more qualms as the nuts and bolts began to be brought
4 out, and our last kind of straw poll where we asked
5 ourselves did we or did we not favor a merger on terms
6 similar to what we've heard described recently, four of the
7 six states came down on a scale of one to five with one good
8 and five negative, with four of the six states saying a four
9 or a five, really against what we are seeing right now, and
10 two states in basically a neutral position, with one of them
11 showing some sympathy, if a few things that they hoped were
12 going to happen, could be locked down the way they were.

13 Now, I suppose you could be glad that's not six
14 fives, six strong negatives, but it's a long way from a
15 ringing endorsement, and it's directly linked to some of the
16 things that we think would have to be shown to make a larger
17 footprint attractive.

18 And the things that would have to be shown would
19 start with a demonstrated reality that there would be not
20 only no impairment, but some gain to the quality of the
21 market rules; a need to overcome the fact that the studies
22 show that not only is there essential a trivial, or
23 meaningless, within the range net gain overall.

24 For New England, there are losses in the early
25 years that have a present value that vastly outweighs a gain

1 at the end of a ten-year period, and that gain exists
2 essentially by taking some quite back-of-the-envelope
3 organizational benefits and pumping them up to just enough
4 to barely convert what's still a negative market, to a
5 positive.

6 I will pause on this one for a moment and say
7 that we had been led to expect, by members of the ISO of New
8 England, that in their conversations with New York, the
9 issue of transfer mechanisms that would hold people harmless
10 or better, had been raised, and yet Bill Muesler, on behalf
11 of the New York ISO, wrote a letter only last week that said
12 that they had not even discussed this question and that they
13 had made not only no commitments, but they hadn't even
14 raised the issue of any way to bridge this gap.

15 But I don't want to get lost on the idea that
16 moderate losses to New England are the driver here. The
17 real issue is that we don't see any gains from it.

18 The next thing that would be very important to
19 us, and, if cured, might become a real attraction, is a
20 major improvement in governance issues, which, as I say, are
21 important, regardless of the footprint and more important
22 than the footprint.

23 As it stands now, the contractual relationship
24 between NEPOOL and the ISO of New England is unhealthy. It
25 allows the use of the contract by the parties who should be

1 -- I'll be blunt -- regulated by the ISO, to instead
2 influence the folks who are setting their market rules and
3 interpreting them.

4 And given a long history in which the New England
5 market participants have been largely influenced by bodies
6 who want either higher prices or larger throughput, and have
7 continuously selected people from those groups as their
8 chairs, that's a very unhealthy relationship, a deeply
9 unhealthy relationship. So, governance that we don't see an
10 improvement on is a big issue.

11 Finally, we think that there is a crying need for
12 an institution that is larger than the states, but more
13 responsive and more locally expert than FERC to be a
14 credible voice on resource additions. By this, I mean,
15 partly siting of new transmission, but I mean generation. I
16 mean, large-scale energy efficiency programs.

17 The key roles for that take two forms: One is to
18 be an expert voice in state siting decisions, where I know,
19 as he head of one group that does that, I am crying out for
20 a legitimate, credible body to tell me whether something is
21 really needed and really good for the system.

22 The second one is, as the body that would
23 legitimate the collection of charges, to uplift or
24 socialized wires charges in any way, because as things stand
25 now, the traditional test of what is pooled and what is

1 gathered do not succeed in differentiating between what
2 should and shouldn't be. In fact, they create some very
3 perverse incentives to have each of several states buy into
4 an expansion in which they can shift the burden to the other
5 states.

6 Yet they ultimately wind up buying into something
7 that, overall, is not good for society. So we have some
8 real concerns about a merger that I'll just break out
9 quickly.

10 In a sense, there's no "there" there. There's no
11 gain to be seen in any meaningful sense. The governance
12 issues are not being addressed well in the drafts that we've
13 seen of how it would move forward.

14 There is some progress in the nomenclature and
15 labeling of resource additions. In other words, it's not
16 longer being called the Transmission Expansion Group, but
17 there is not yet developed, any legitimacy in terms of track
18 record or capability of staff for a long-term view.

19 And with those concerns, we see most of this as
20 chewing up an infinite amount of time and attention by the
21 boards of directors of the ISOs, which could be better
22 devoted to trying to make the markets work really well.

23

24

25

1 Now, as I say, we didn't all come down with a
2 five, absolute negative on the concept of merger. Our
3 weighted average is somewhere in the four range.

4 MR. WELCH: Michael, how do you come up with an
5 average in the four range when the worst vote was four, two
6 people abstained, and a couple were two?

7 MR. DWORKIN: The answer, Tom, is --

8 MR. WELCH: I haven't broken in, Michael, but I
9 think you need to be a little bit careful about representing
10 what you said as the NECPUC position.

11 MR. DWORKIN: We'll go around, Tom, don't worry.

12 MR. WELCH: -- where they wanted to proceed. And
13 while I agree with some of the concerns you've raised,
14 although I will touch on them in a moment, you know, be
15 careful about I think -- and FERC ought to be careful about
16 thinking we have sort of all worked our way through these
17 issues and reached some particular conclusion that falls on
18 one side of the fulcrum or the other.

19 MR. DWORKIN: Tom, we had four states with a
20 four, one of which was split between a four and a five. We
21 had two states with a three, one of which had one person who
22 said they might be a two if some things could be met.

23 MR. DIAMOND: Let's not rehash it in public.
24 This is Steve Diamond. I have a somewhat different
25 recollection. In fact, I have one state I didn't think

1 weighed in at all, unless it weighed in later. But I think
2 it's fair --

3 MR. DWORKIN: But the point is clear.

4 MR. DIAMOND: I think it's fair to say we have
5 some division on the issue of the footprint, and there's
6 certainly some sentiment against the merger, but there's
7 some sentiment in the other direction, maybe less. We can
8 fight about that some other time. I think it's important,
9 though, at least that FERC realize that there are some
10 issues like governance and market monitoring on which we
11 appear to have unanimity. So the different issues are in a
12 different posture from the New England perspective.

13 MR. DWORKIN: And it's worth also saying that for
14 many of us, there is a somewhat murky line between how we
15 might feel about some potential mergers and how we feel
16 about the details of drafts that have been circulated and
17 posted by the Northeast RTO participants but which they've
18 put onto a Web site that they've labeled confidential that
19 they don't want us describing in detail.

20 So I can only tell you that some of our concerns
21 are specific as opposed to theoretical. But the larger
22 issues of governance and market rules are ones that are not
23 specific to any details of drafting. But as I say on
24 governance, some of us have some hopes that a better
25 governance structure than the status quo could be achieved,

1 and if it was part of a merger, that would shift it from
2 being a negative to a positive.

3 COMMISSIONER BROWNELL: Do you have any specific
4 recommendations? I heard you very clearly say that market
5 participants in the existing structure have too much
6 influence over both selection and retention. You didn't
7 talk about the relationship of the board and their
8 accountability and how they hold the management accountable,
9 which I would assume is also an issue. It's certainly an
10 issue that I've expressed. Does anybody have any kind of
11 specific recommendations on what you'd like to see in
12 governance, even if it's simply some broad policy statements
13 or some very clear specifics, either one?

14 MR. DWORKIN: We have some pretty detailed ones I
15 think we'll be posting by the end of today. Tom, do you
16 want to describe them? I mean, I've got Lisa's memo here
17 and I can run through them, but you may be the best.

18 MR. WELCH: I think they're probably easier for
19 people to read ultimately. The basic principle, Nora, is we
20 think that there are kind of two models that one could
21 choose, or one could choose between for what an RTO is. One
22 of them is that the RTO is kind of an adjunct to the market
23 participants doing work that might otherwise be done by the
24 market participants.

25 And the second one, which we very strongly

1 prefer, is that the RTO is really -- I don't want to say
2 delegate, because it carries too many legal implications.
3 But in essence the RTO is performing the functions that the
4 FERC believes are essential in order to permit a market to
5 depart from cost-based rates and go to market-based rates.
6 And that in that context, it has to be completely
7 underscored several times in capital letters, completely
8 independent of market participants or any combination of
9 market participants, so that it should be something that
10 listens to in the sense of, literally listens as opposed to
11 takes direction from, market participants or groups of
12 market participants. and really draws its authority entirely
13 from the FERC.

14 This does give FERC a very difficult but I think
15 vital role in overseeing the RTO. But for that reason, I
16 think the point on which the NECPUC Commissioners are quite
17 strong and unanimous is that there should be no decisions
18 made by the RTO which can be vetoed or impeded in any way by
19 any group of market participants. Because if you do that,
20 it's just NEPOOL all over again. And what the RTO ought to
21 be is to make its own independent judgment as to how to
22 proceed subject to FERC oversight and comment by other
23 parties.

24 So in our view, there's no role for the other
25 than advisory in the technically correct sense of the word,

1 which is to say someone gives you advice, on either board
2 formation or administration. The RTO has all the Section
3 205 rights, and we think that if you don't have that kind of
4 genuine independence, then you will lack both the
5 institutional independence needed to make the appropriate
6 choices from FERC's perspective and the perceptual
7 independence that I think the public is going to require for
8 turning over important functions to markets which have not
9 always shown themselves to be pristine.

10 So, in a nutshell, that's --

11 COMMISSIONER BROWNELL: Good. That's helpful.

12 MR. DIAMOND: Nora, this is Steve Diamond. I was
13 going to offer one point on accountability. I'm getting
14 some feedback here -- and that is we think accountability of
15 the RTO, including the RTO board, should be through FERC.
16 And one suggestion we have put out there is in addition to
17 the board member selection process being open as far as
18 everyone having ample input as opposed to decisionmaking
19 powers, that there be a confirmation process before FERC so
20 that if somebody really has problems, either individually or
21 as a group, including the market participants, with either a
22 slate or an individual board nominee, that it would be FERC
23 that would have the final say on that.

24 So we see really that as being the major avenue
25 is accountability for the reasons Tom has said, which is

1 that we really think that what the RTO is doing is carrying
2 out the same role that FERC carries out or executing really
3 FERC policy at the regional level, and that it ought to be
4 through FERC that the accountability flows.

5 MS. BROCKWAY: Nora, this is Nancy Brockway.

6 COMMISSIONER BROWNELL: Hi.

7 MS. BROCKWAY: I want to second the remarks that
8 have been made. We in New Hampshire also think that the
9 independence of the board, whatever the footprint, is
10 crucial. And I think there is a -- I don't know and I'm not
11 asking what your staff's understanding of your legal rights
12 are to require an RTO over the objections of, for example,
13 any individual transmission owner. But I think any effort
14 to -- I'll just say it straight out -- buy the support for
15 an RTO by certain public utilities now by giving them a role
16 on the board would ultimately defeat the purpose of the RTO.

17 So if we're going to get there, whether it's in
18 the New England footprint or a larger footprint or whatever,
19 we have to do it cleanly and in such a way that the board
20 has true independence, and as Steve and Tom have said,
21 accountability to the FERC.

22 COMMISSIONER BROWNELL: Thank you.

23 MR. DWORKIN: It's probably worth noting that --
24 you've heard us all talking about unanimity here, and the
25 other states can chime in, but it's not merely a matter of

1 policy. There's a legal line which runs all the way back to
2 Schechter Poultry about delegating to an industry trade
3 association the fundamental responsibilities of government
4 that is really meaningful here, and that the current
5 situation is dangerously close to the boundaries of I think.

6 It's clear there are basically two
7 responsibilities that you want RTOs to carry out, one of
8 which is the management of transmission and dispatch of
9 generation. The other one is the rules and the decisions
10 about how the rules are implemented and interpreted, and to
11 the degree that you're relying on that body to ensure that
12 market-based rates meet the statutory standard of just and
13 reasonable rates, you're relying on that body to fulfill a
14 responsibility that Congress placed on FERC.

15 We think it's feasible for you to do it if, but
16 only if, that body is independent of the people who
17 participate in the markets. I will tell you, I went back
18 and looked at your MISO decision. I was troubled by it. I
19 don't know the full balance of arguments and decisions that
20 went into it and to what degree you thought you had
21 discretion or were taking what was offered, but in a world
22 in which the market participants have an interest in either
23 high prices or high volume and don't have a truly effective
24 equivalent from the purchasing side -- and I don't mean just
25 the label, I mean equally effective -- it is extraordinarily

1 dangerous to grant them the right to decide who stays on the
2 board or who goes on the board.

3 We do have kind of detailed thoughts about how
4 many members of a board there should be. We can talk about
5 how long their terms should be, whether there should be
6 rollover, but the fundamental issue of independence is one
7 that is really strong for us on this and one that's very
8 scary in both what we've seen and what we are being told may
9 come forward in the future. Deeply troubling.

10 MR. ARTHUR: This is Glenn Arthur in Connecticut.
11 And I think that's unanimous in governance issue on the
12 independence from market participants.

13 I'm going to shift to another thing that Michael
14 brought up, and that's this -- currently some are concerned
15 that FERC is going to put out an edict that thou shalt do
16 this as far as RTOs. And from my point of view, and I'm one
17 of the "for" guys, currently New England and New York are
18 working toward standard market design and working seams
19 issues which I think are the two major steps that have to be
20 taken to open up the electric highway.

21 I think meeting those and getting on with them
22 and solving those problems so that New York and probably PJM
23 were copying them to a great extent of getting the standard
24 market and these seams issues resolved so we can have a flow
25 of electricity through New York and New England and up into

1 Canada, if that comes to be, is what we should be putting
2 our best efforts and fullest efforts towards at the present
3 time.

4 MS. HELMER: This is Maureen Helmer. Can I
5 inject for a few minutes from the other side of the seam?

6 COMMISSIONER BROWNELL: Please.

7 MS. HELMER: A lot has been said by the New
8 England commissioners and references to unanimity and so
9 forth among them. However, you can argue what that level of
10 unanimity is. I'd just like to share a couple of thoughts
11 from over on the left-hand side.

12 I think we all have been watching this very
13 carefully, because I think, as Michael pointed out, most of
14 us started out with thoughts that a larger market was a good
15 idea for varieties of reasons. I have been very concerned
16 throughout the process, however, that a rush to put in a
17 filing by the end of June, wherever that date came from, and
18 naturally there are those who say it comes from FERC, but
19 you know, we can all speculate about that. But the rush to
20 get this filing in has been I think really risking the kinds
21 of important matters that Michael spoke so eloquently about.
22 You know, the value of good rules, the value of good
23 governance, the value of both of these entities, the New
24 York and the New England markets, moving forward with things
25 that are better than what they started with.

1 And as importantly, again, I think you know a
2 couple of people have alluded to the fact that an RTO or any
3 particular governance mechanism like that is only a means to
4 an end, and the ultimate end, as Nora described it, is
5 better electricity rates for consumers, better flows of
6 electricity, reliable electricity to consumers. But that
7 intermediate level of concern is breaking down the seams,
8 the intermediate goal is breaking down the seams. And RTOs
9 have been viewed as the way of breaking down the seams.

10 But unfortunately, in this rush to get this
11 filing in, what I've observed with our ISO is that the work
12 on the seams, both between New York and New England and New
13 York and PJM, has visibly suffered, although I think a lot
14 of excellent work has gone on at the FERC with standard
15 market design and doing these things from a global
16 perspective, there's a lot of nuts and bolts work that has
17 to continue between the ISOs, whether it's under a single
18 umbrella organization or multiple umbrella organizations, to
19 break down these seams, and that work is visibly suffering.

20 As somebody pointed out, I think Michael earlier,
21 every month that goes by with broken rules, with imperfect
22 rules, a lot of money gets spent by consumers that doesn't
23 have to be spent by consumers. And at some point I think we
24 need to figure out if this is a good idea, because if it's
25 not, it's time to get back to the real work. You know,

1 obviously, we started from a place where we thought a larger
2 organization which included PJM was the preferable
3 alternative. That does not seem to be in the cards anymore.
4 But certainly getting to the point where we have a standard
5 market design between PJM, New York and New England and our
6 neighbors to the north is very, very important towards
7 opening up this commerce.

8 New York has a set of rules which are I think
9 heading in the right direction. And my biggest concern
10 right now is that we not step backwards as a result of any
11 merger or any set of decisions that we make either in the
12 states or at FERC that is going to set those goals
13 backwards.

14 COMMISSIONER BROWNELL: Maureen, it's Nora. Can
15 I just ask an honest question? You and I lived through the
16 seams discussions for it strikes me five years, four years
17 anyway. And we're both frustrated I think, certainly I was,
18 at the lack of progress. And while we're working on the
19 standard market design at this end, what is it that we need
20 to do to motivate these three organizations who it strikes
21 me overnight have created bureaucracies that rival the
22 federal and state governments?

23 (Laughter.)

24 COMMISSIONER BROWNELL: What's the incentive to
25 get them to work on this? Because there's a whole lot of

1 time being spent on social issues and who's going to be on
2 the board and who's going to be the executive director and
3 not a lot of focus on what you would like to focus on, and
4 we don't disagree with that.

5 MS. HELMER: Nora -- excuse me, Commissioner -- I
6 would respond that first of all I think some credit is due
7 where some credit is due. The three ISOs over I would say
8 the last year plus have made substantial progress on some
9 important seams issues. And I don't want to say that the
10 work since this NERTO idea came up has come to a screeching
11 halt, but it has significantly slowed down. And there are
12 some important issues that remain to be resolved.

13 And frankly, I think a lot of the work that you
14 are doing with standard market design really will address
15 some of those remaining issues. But I've got to tell you
16 all, frankly, that the work that's been done in the last
17 couple of months between these two ISOs, at the risk of
18 being repetitive, has slowed down those seams issues and has
19 slowed down relationships, for example, with the PJM because
20 of some of the friction and the personal issues that have
21 come up.

22 I think the strong message is that either these
23 issues will not be tolerated going on or that they will be
24 resolved by the FERC if they can't be resolved by the
25 regions themselves may go some ways towards helping to

1 resolve that, you know, creating some kind of an alternative
2 dispute resolution which would be binding on the regions,
3 you know, could be helpful in moving things forward. But at
4 this point, I don't see the NERTO effort itself as really
5 helping those issues. Everyone is quite candid about the
6 fact that it's a defensive measure. It's a measure against
7 having the FERC come down and determine something on its own
8 that may not be to the liking of these two regions. And the
9 input from the state commissions has been very poor.

10 Michael alluded to the fact that we need some
11 organization to deal directly with these ISOs, RTOs,
12 whatever they end up being, so that we can effectively
13 communicate with them. I would say that right now the input
14 into this process has not been good. And at this point, I
15 think we need to take a step back and figure out what is the
16 goal versus what is the means.

17 MR. RODGERS: This is Steve Rodgers on FERC
18 Staff. Chairman Helmer, if I could just follow up on your
19 last point there about the input from the states being poor.
20 Are you meaning by that that the states have not had an
21 opportunity to get as involved in the process as they would
22 like to have, or that your advice and concerns that you've
23 raised have been ignored?

24 MS. HELMER: Well, our staff has been allowed to
25 attend all kinds of meetings, stakeholder meetings and so

1 forth, and to use an expression that Michael used earlier, I
2 think they've been treated like any other stakeholder. And
3 we can debate whether or not that's right or not. I could
4 argue that both ways, including the fact that, you know, at
5 some point at state commissions, we have to approve the
6 transfer of assets to make this happen or not approve the
7 transfer of assets. And of course, you know, our
8 involvement as a result of looking ahead to that decisional
9 process is a little complicated.

10 But I would say that tomorrow is the first time
11 that they have formally asked the commissioners to come in
12 and on a formal basis make a presentation on how they're
13 feeling about this. In a process which one of our concerns
14 from the beginning has been the fact that they've had in
15 parallel this cost benefit analysis work being done, which
16 is supposed to feed into a decisional process as to whether
17 or not to move forward, and the deadlines don't even mesh.
18 I mean, you know, for the New York ISO to come in and say
19 these are not final results of this cost benefit analysis is
20 fine and good, but if you look at adding a month to where we
21 are now, I have a question, which is going to hit FERC
22 first, the cost benefit analysis or the papers that they're
23 putting together on behalf of the merger? It's coming very
24 late in the process. They made a lot of these decisions.

25 There are huge issues left open, as was alluded

1 to earlier, about cost sharing or transitional mechanisms.
2 These are huge, contentious issues that really no one's even
3 scratched the surface of. There's rumors of New York having
4 to pay for software to bring the New England ISO into
5 something which resembles a more mature market. There are
6 all kinds of huge issues that are left open. And, you know,
7 we're just a little frustrated at this point.

8 MR. DWORKIN: I can maybe give a positive spin
9 that I think is helpful on one piece of progress. You asked
10 how to have incentives to make the one, two three or more
11 ISOs do better on seams issues. I will say that I think the
12 market shocks over the last few summers created an incentive
13 to do better on market design overall.

14 I am for the first time in the three years since
15 I came back, and in the five-and-a-half years since I
16 reviewed the record, seeing a meaningful effort at multi-
17 settlement systems and a meaningful effort at bringing
18 demand response in. And that is something that will go
19 faster with less attention devoted to footprint issues and
20 more attention devoted to it.

21 On the seams issues, I am seeing studies which
22 isolate where they are, which define the scope and scale of
23 the problem, which frankly show that it's not a big problem
24 between New England and New York. There are not a lot of
25 east-west trades that should be occurring that aren't.

1 There are a few. There's some value there to be perceived,
2 but in a world where you set priorities recognizing that the
3 added value of eliminating seams between New York and New
4 England is smaller than additional transmission links to the
5 north, where you've got a hydro system that would offer a
6 nice complement to a fossil fuel system, and where you have
7 the timing value of impoundment for what is generally a
8 capacity-tested system, that's more important.

9 Similarly, the demand response part is more
10 important. We're seeing, because of market shocks and
11 because FERC imposed caps and because FERC has talked about
12 altering its hub-and-spoke market power thing, the sort of
13 impacts that are either through the sellers or through the
14 management of the ISO beginning to have some effect on
15 making it work on some of its real problems.

16 I don't have the sense that I had two years ago
17 that NEPOOL was a morass and could not move and that the ISO
18 could not move without NEPOOL's blessing, and therefore
19 nothing would happen. I do have a sense of productive work
20 being done on making some of the important stuff get better.
21 And I think the incentives that you spoke of mostly consist
22 of the fact that they realized they weren't doing a good
23 job. They realize that they're having serious reliability
24 fears and serious market price spike problems, and they're
25 responding to those in a workman-like way.

1 MS. HELMER: This is Maureen again. The ISOs
2 know what the seams issues are, and they have internal
3 agendas as to what the timeline is to repair them, what's
4 necessary, whether they meet FERC approvals, whether they be
5 technological fixes or what have you, I would strongly
6 suggest that FERC simply ask the ISOs, what the issues are,
7 what their plans are to repair them, and then ask them to
8 come in on a routine basis and explain to them, exactly what
9 their progress is. That would hold their feet to the fire.

10 Whether they're distracted by a NERTO or whatever
11 their latest endeavor is, it would provide the FERC with
12 some ability to keep an eye on them.

13 MR. DWORKIN: I'd also like to make a somewhat
14 candid comment about what Steve Rodgers asked about process
15 issues. Here's an example:

16 We've been told more than a few times by ISO
17 senior staff and by ISO members of the board that, as
18 Maureen said, a merger is a defensive maneuver, or as they
19 say, FERC senior staff says that FERC is going to require a
20 merger, so we might as well figure out how to guide the
21 event, rather than comment directly on its overall
22 desirability.

23 That's a message that we've heard repeatedly, and
24 it's one that means that it's fairly hard to focus on
25 economic analysis of the potential benefits in a nuts-and-

1 bolts financial way. And it's very hard to talk about
2 comparative use of resources, if they feel it's a shotgun
3 wedding imposed by federal regulators.

4 And they act that way. It makes the nuts and
5 bolts of getting serious work done very difficult. That's a
6 blend of process and substance that I think is an example,
7 Steve, of what you were asking about in terms of what we
8 hear.

9 MR. WELCH: This is Tom Welch of Maine. First of
10 all, I want to say that I appreciate the comments Maureen
11 made, and, frankly, also the comments that were made at the
12 beginning in terms of what's really important here in
13 getting the market rules correct, and making sure that
14 however we try to move, that the direction ought to be
15 toward better rules and more independence.

16 But my growing sense is that the question of
17 whether or not the particular RTO footprint should cover
18 seven states or 15 states or something else, is probably the
19 least important question we're facing, although it may be a
20 necessary tool to achieve some of the other results.

21 And my own sense is that one of the reasons it
22 has gathered the attention of so many of the market
23 participants and the RTOs and ISOs is really that the
24 examination of the question of how big the RTO footprint
25 should be, is really the occasion upon which, at least in

1 New England, the market participants see their last hold
2 over the ISO as weakening, which I see as a very positive
3 thing.

4 Nevertheless, it's why maybe people's efforts are
5 being consumed by it. I think that the logic and the cost-
6 benefit studies, both the one done by ISOs and the ones done
7 by FERC, have actually confused the issue in what I believe
8 to be an unfortunate way, if you believe that the seams are
9 going to be eliminated.

10 I think that I asked at the beginning of the
11 call, and FERC confirmed, then what you have to have is --
12 when I say "seams," I mean any transaction which is economic
13 ought to be able to flow without barriers, other than
14 physical constraints.

15 The cost-benefit studies, the vast majority of
16 those benefits and burdens will be achieved by reaching that
17 point. Then the question is, how do you preserve that
18 situation?

19 I've always thought that the question of what
20 does an RTO do for you and what it does if you have a single
21 RTO, is that it eliminates markets diverging, because they
22 have balkanized review structures for what the market rules
23 ought to be.

24 Beyond that, the question of whether you have
25 merger or non-merger, big RTO, small RTO, depends on whether

1 or not you believe, relative to where you are in terms of
2 your own ISO or RTO and its market rules, and where you wind
3 up, is a better place or a worse place.

4 If you assume that the final RTO is going to have
5 better rules and more independence, then, of course, you
6 move to it. My own sense is -- and this is probably why I
7 differ from some others in NECPUC, is that I'm going to have
8 the New York staff looking at the market rules that my
9 customers have to endure. I see that as a benefit to having
10 a bigger group of people looking at it, perhaps more
11 interest and other benefits as well.

12 But frankly it seems to me that so much as been
13 wrapped up in whether we have this particular boundary, and
14 what may have been lost is that that is, at best, a tool to
15 achieve something that I think people recognize has to be
16 done anyway.

17 MR. MEYERS: This is Ed Meyers. I'd just like to
18 jump in here and say that we're joined by the Chairman, Pat
19 Wood. Mr. Chairman, I'll be glad to give you maybe a 60-
20 summary, if that would help, or we could just keep on
21 talking.

22 CHAIRMAN WOOD: I've got someone here taking
23 great notes. Sorry I'm late. Thank you for everybody being
24 on the call, and Mike for being here.

25 MS. BROCKWAY: This is Nancy Brockway, again. I

1 want to follow up on what Tom just said, and in so doing, go
2 back to a point that Commissioner Brownell made some minutes
3 ago about the understandable frustration at all the various
4 proposals for organization of the board and who gets to be
5 the CEO and all of this that was characterized as
6 bureaucracy.

7 I think it's one of the ironies of the situation
8 that once you put into play, the question of creating a new
9 institution, you are necessarily going to get a lot of
10 serious debate about what it should look like and who should
11 be on it and so forth, most of which, I think, has nothing
12 to do now with personalities.

13 In fact, if it's any comfort, my own experience
14 of this process has been that our ISO board is quite willing
15 to have itself dismantled. And there is no pride of
16 membership on a New England ISO board. They are being quite
17 responsive to this idea of having a NERTO, and I, for one,
18 don't think they're fighting hard enough to hold New England
19 harmless from those at-risk effects that there are.

20 MR. ARTHUR: This is Glenn Arthur. One of the
21 things that is pressuring ISO New England, just to refresh
22 people's memories -- the ISO contract runs out at the end of
23 June, and Maureen Helmer was talking about what's pressing.

24 That contracts was extended for a year, I
25 believe, with the provision that something be done in this

1 merging of the markets. That timeline also represents the
2 problem we have with ISO and NEPOOL, where NEPOOL actually
3 hires ISO and in some ways controls what happens here.

4 So there is pressure from that point of view,
5 although I believe and others believe that we're moving fast
6 and using resources for an organization to oversee this
7 footprint, whatever it is, that could much better be used to
8 produce the market rules and solve the seams problems.

9 COMMISSIONER BROWNELL: There have been periodic
10 reports in the trade press, and, indeed, people in the
11 building, suggesting that the threat of that contract date
12 conclusion somehow made it difficult for the ISO to be as
13 independent, on occasion, as they would like to be.

14 Was it ever really an issue? Is it an issue now?
15 What happens in June?

16 Assuming scope and footprint are not resolved,
17 what's the outcome of those contract discussions?

18 MR. ARTHUR: This is Glenn Arthur again. That,
19 placed on the fact that most of the times we have met with
20 the ISO, either the whole board or the oversight group, you
21 have the feeling that they're thinking, waiting for NERC to
22 tell them to form an ISO, a NERTO, or whatever, and also
23 this problem with the NEPOOL having a contract over their
24 heads.

25 I don't know that that's influenced any of this

1 negotiation, however --

2 MR. DIAMOND: This is Steve Diamond. We can get
3 you what the final agreement was, but what the arrangement
4 was on the contract extension, was, the filing has to be
5 made by November 1st.

6 And NEPOOL will take a vote on the filing at the
7 time that it's done. I don't remember exactly the details,
8 but their original position was that if they approved the
9 filing that was done by the ISO, that the ISO would get a
10 longer contract extension.

11 We objected to that, as did the ISO, and that was
12 all softened. I can't remember the details of the final
13 arrangement, but there was no question that some of us
14 perceived that what NEPOOL was attempting to do, initially,
15 was to directly link their approval of what ISO filed with
16 FERC, in terms of creating an RTO, with the length of the
17 extension that ISO got in its contract.

18 So there was clearly an appearance problem there.
19 I want to go back and just make a couple of other quick
20 points:

21 One is to respond to something Maureen said.
22 That is, as far as access to this process, in fairness to
23 the ISO board in New England, I have found them to be very
24 solicitous over the past couple of months of our views.
25 They have set up or initiated several meetings with us, with

1 our whole board, and then we've got some groups that deal
2 with their oversight board that's working directly on the
3 RTO formation that communicates by conference call.

4 Whether they listen to us or not, I guess people
5 could debate. I think the proposal they have put out, the
6 draft proposal that's been put out, does to some degree,
7 reflect our input, again, not the way we would have done it,
8 necessarily.

9 So in fairness to them, just for the record, I
10 think they have, far more than any other point in their
11 history, in the past several months, been very interested in
12 where we are on these issues, and have actually reached out
13 to us on it.

14 I think that on the cost-benefit issue, one thing
15 that people just have to look at is, there's obviously going
16 to be a political dimension to this. A cost-benefit study
17 has been produced, tentative though it is. I don't know
18 whether it's going to change, but it shows New England to be
19 a net loser in 2005, maybe not by a dramatic amount, but,
20 nonetheless, a net loser.

21 And that essentially -- and at essentially a
22 break-even position in 2010. I think that one political
23 question out there is how do you persuade people in New
24 England that this has some benefit to them?

25 From the four corners of that cost-benefit

1 analysis, it's obviously an impossible sell. Now, of
2 course, one of the ironies of all of this -- and this is one
3 of the reasons for our division with New England as to
4 whether the merger goes forward -- is that those losses to
5 New England, if the prediction is right, will occur with or
6 without a merger.

7 If you break down the seams and you eliminate the
8 export fees, and, quite frankly -- and I don't say this
9 cynically, but if I were in Maureen's shoes, I would be
10 arguing for the very thing Maureen is arguing for, which is,
11 you know, let's maximize the amount of power to New York and
12 input from PJM and from New England, and not worry about
13 maybe dealing with some of the other issues that you might
14 get with a full merger, which is one of the financial
15 consequences which would flow from that.

16 I think that's part of the division we have
17 within New England as to the so-called footprint or merger
18 issue. But that gets a little bit more perhaps subtle in
19 terms of dealing with it.

20 I just will say that as this filters its way back
21 to the sort of political decisionmakers in our states, I
22 think this was not unlike the PJM analysis that was done,
23 which hit our legislature in Maine. This is a document that
24 is not going to be an overwhelmingly strong case from the
25 New England perspective for integrating these markets.

1 MR. DWORKIN: Unfortunately, it's even worse,
2 because most of the benefits seem to be rather soft and the
3 costs seem to be rather hard. If you look at the rigor of
4 the analysis, the uncertainties are much larger on the
5 positive side; the dangers are much worse on the cost side.

6 There's no "there" there, as I said before, in
7 terms of the benefits; it's all organizational savings a
8 decade from now. And the costs are very real.

9 MS. BROCKWAY: This is Nancy again. It's very
10 clear that, in principle, it should be possible to eliminate
11 seams, including the contribution that export transactions
12 make to the cost of uplift and ancillary services and so
13 forth.

14 But do it in such a way that through ratemaking
15 or some other tool, New England is held harmless. It
16 doesn't seem to me that you need to have RTO to do that.

17 Once you get into an RTO, certainly that is a
18 vehicle for doing that, exclusively. The other thing that
19 arises, though, is the need to deal with the system
20 expansion question.

21 And there I have been proposing -- Michael
22 alluded to it at the very beginning -- a way of exclusively
23 bringing in the representatives of the various states who
24 ultimately will have siting authority.

25 Even if the Federal Government changed the law, I

1 think that ultimately one would want to be responsive to the
2 states. If you don't do something like that, you have to do
3 something, and you also have to do something that doesn't just
4 put the thumb down on the side of one thing in this scale of
5 resources, such as transmission in this case.

6 So, you buy the governance problem, you buy the
7 system expansion problem, you buy a number of other
8 problems, which, as others have said, divert us from getting
9 the market rules right.

10 MR. RODGERS: This is Steve Rodgers on FERC staff
11 again. I wanted to mention that we've been joined here in
12 Washington by Commissioner Bill Massey. Commissioner
13 Brownell has left the room. Welcome, Commissioner Massey.

14 COMMISSIONER MASSEY: Good morning. I'm glad to
15 be here.

16 MR. RODGERS: One point that I wanted to mention
17 is that a lot of the discussion we've heard this morning
18 seems to suggest that the work on an RTO in the Northeast,
19 whatever its scope might be, has impeded the resolution of
20 seams issues and setting up a standard market design and
21 getting an open market in the Northeast.

22 I'm wondering if the perception is that those are
23 mutually exclusive goals, or rather whether the formation of
24 an RTO of whatever scope might help achieve those goals and
25 work in parallel in achieving those goals?

1 MS. BROCKWAY: I'll just say again that it might
2 help achieve those goals, but there is no way to do it
3 without an exhausting and exhaustive work on governance,
4 creating a whole institution out of whole cloth, that we're
5 in the process of doing, which is necessarily diverting
6 people's attention from the more specific tasks of getting
7 the markets right.

8 MR. DWORKIN: This is Michael. I think some of
9 us thought six months ago that these might be complementary
10 goals that could be pursued in parallel, but I think the
11 experience of the last six to eight months has convinced,
12 certainly me, and, I think, many of us, that in a pragmatic
13 way, they need to be pursued serially, rather than in
14 parallel.

15 Partly, it's a human resource issue, and partly
16 it's because of the intertwining. It is extraordinarily
17 difficult to know what the rules should be, if you don't
18 know who is going to be implementing them.

19 The FERC settlement judge, six or eight months
20 ago, generally put governance issues behind other issues.
21 In practice, I think it turned out that they had to be in
22 front of them.

23 This is almost like the issue of a constitutional
24 convention. We needed to set up what was the structure, and
25 who is going to make the decisionmaking, in parallel to

1 authority before the first Congress met and started passing
2 laws.

3 The effort here to move on merger issues without
4 progress on governance has been troubling, and the effort to
5 move on merger issues has had, for whatever reasons -- good
6 or bad -- in the real world, it has impaired progress on
7 market rules.

8 MR. DIAMOND: Steve Diamond. I'd just like weigh
9 in on that. It's become now the perceived wisdom in this
10 call that the movement toward the RTO has somehow materially
11 delayed the implementation of standard market design. I
12 don't know the answer to that, frankly. I think that ought
13 to be looked at very careful before someone operates on that
14 premise.

15 My understanding is that we're still on track in
16 New England to implement locational, marginal pricing, and
17 the rest of standard market design, obviously it's got to
18 have something of an impact. But I think that before major
19 decisions are made on that premise, somebody has got to
20 elicit some more specific as to where things are seriously
21 delayed, and address it specifically.

22 MS. BROCKWAY: Steve, as one of the people who
23 spoke up for this being a process that's diverting, I didn't
24 hear anybody else say that standard market design in New
25 England has been delayed. We have repeatedly asked for and

1 gotten reassurance from the ISO that they are moving ahead.

2

3 I think what I was talking about was going
4 further and dealing with seams issues, as they would have to
5 be dealt with if you were not doing an RTO. Although, as
6 Maureen said, a number of those are going forward.

7 I'm also concerned, for example, that our time
8 has been taken up with these issues of forming a new
9 institution. I, frankly, have only had time to think about
10 the letter that we will be sending to the ISO about the
11 market gains and what they have done about that.

12 We should be all over them and know a lot more
13 about it than we do. We've just been diverted, so that type
14 of thing is not the standard market design, per se.

15 MS. HELMER: This is Maureen. Just to add to
16 that, my comments arise from a number of informal
17 discussions with people at the ISO, where they have
18 specifically said that work on X, Y, and Z has been stalled
19 because they are so overwhelmingly consumed with the issues
20 with the NERTO.

21 I will add that it's not just seams issues, but
22 we have some very important internal issues, internal to New
23 York, work on reference prices, work on local load pocket
24 issues, where I've been told, very candidly, that stuff is
25 just getting shelved because everybody is consumed with this

1 work on the NERTO.

2 MR. DIAMOND: I understand, but my point is that
3 I think we ought to identify what X, Y, and Z are.

4 MR. GERMANI: Elia Germani here. This is so
5 obvious that I'm surprised no one has mentioned it, but it
6 seems to me that a priority concern may be the various
7 employees of ISO that, one, they may not have a job in six
8 months. That may be a preoccupation.

9 Number two, it seems to me that until and unless
10 the NEPOOL participants think they can get a handle on who
11 is going to control what, they may be reluctant to see the
12 process moving forward until they can see that they will
13 control things.

14 So we've got a number of issues working in
15 parallel. Plus, you've got Commissioners who have a lot of
16 other things on their plates, other than this issue before
17 us, which is creating problems.

18 We have to educate ourselves appropriately to
19 respond appropriately.

20 MR. DWORKIN: I might add one observation that
21 goes beyond our direct experience, but which may be helpful
22 for FERC. I read pretty carefully, FERC's white paper on
23 standard market design.

24 Then I went back and took a look at Order 888 in
25 2000. And I came to what may be some simplistic

1 conclusions, but they were that if FERC is really trying to
2 get a better nationwide wholesale power market, and to open
3 up the transmission grid, and is thinking to use the
4 Northeast as a poster child for it or as a model, there's a
5 lot in the Northeast to use.

6 I mean, NEPOOL has had a tight power grid with a
7 dispatch move through it, independent of ownership in many
8 ways. That can be improved in the moderate ways, and you
9 can get at, if you will, the poster child or a model of an
10 area with a tight power grid and open access tariffs without
11 needing to have the footprint on a map image.

12 You know, I actually, in a simplistic sense, read
13 last summer's Order as saying that FERC was so disappointed
14 with the Southeast's unwillingness to open up its
15 transmission that it ordered the Northeast to merge. It's
16 obviously a logical disconnect, and yet if you go to post
17 hoc ergo propter hoc, it actually looks that way.

18 I think there are other solutions -- other
19 disappointments with the opening of the southeastern
20 transmission grid that are different from ordering the
21 merger in the Northeast where the dollars and cents value is
22 low and the model is already in a place where it's the
23 market rules that matter, and it ought to be tweaked -- more
24 than tweaked. Some of these are serious, but they are
25 manageable without organizational disruption.

1 CHAIRMAN WOOD: In the interest of historical --
2 since I was at that vote -- this is Pat -- it was actually
3 our frustration. The first day I was here, I voted on the
4 west-wide price cap order which was a lot of fun.

5 The second day here, we had a seams conference
6 with participants from across the country. And I'm not
7 sure, Michael, if you were there.

8 MR. DWORKIN: I was not.

9 CHAIRMAN WOOD: Maureen, I think was there, where
10 it just became evident that the Southeast actually was the
11 drive-by victim, I think, of our frustration with the
12 Northeast and the seams agreement that wasn't coming to any
13 kind of agreement.

14 We just walked away from that and said this is
15 not working. So, there are two ways of getting there, both
16 of which are still on the table.

17 One is to have a single organization resolve all
18 those conflicts as an organization, and then make that the
19 rule of the road for the whole area. Or, two, to
20 standardize the market design through federal fiat, which,
21 we're going through that, as well.

22 You know, I guess I would like, before the hours
23 runs up, to hear back, since I wasn't here for the first
24 hour, but what do you all want us to do? We need to give
25 the employees some certainty. We laughed about that issue a

1 minute ago, but I don't actually think it's funny.

2 I think it's something that's very real. The
3 people's lives, standard market design, either through the
4 guise of a single RTO or through our obligation on every
5 public utility's tariff, is going to create a lot of these
6 savings, and some of these cost-shift issues are going to
7 have to be dealt with anyway.

8 The elimination of the export fee, certainly is
9 on my agenda, regardless of how we divvy up the
10 organizational responsibilities. So I think a lot of the
11 issues we're talking about in savings are going to happen or
12 cost-shifts are going to happen with more efficient markets
13 through a standard market design.

14 I just kind of want to know from you all, what do
15 we need to do in, like, the next 60 days? What do we need
16 to do in the next 360 days, as FERC, to really back up the
17 region's efforts to maximize the benefits of wholesale power
18 markets?

19 MR. DWORKIN: I think maybe each of the seven
20 states and some of the Canadians want to chime in on this,
21 but I think we touched on this at the beginning, and some of
22 the ones you mentioned -- moving standard market designs
23 forward with a meaningful demand curve, and we have some
24 thoughts most of us have filed in our comments on ancillary
25 services and other ways to make that happen is a key part.

1 MR. VASINGTON: This is Paul Vasington from
2 Massachusetts. The critical issue that should be decided
3 right up front is the question of independence of an RTO or
4 even an ISO.

5 We're in a limbo state now, with NEPOOL still
6 holding kind of decisionmaking authority that we have said -
7 - and I think the FERC has said it doesn't want to see
8 continue into the future.

9 While we're in this limbo state waiting to see
10 what happens in RTO development, there is some impact on
11 standard market design and market rules going forward
12 because of the uncertainty. I would say elevate the
13 question of independence above all else, and decide that as
14 soon as possible.

15 MR. DWORKIN: Basically I agree with Paul. My
16 top two are rules that bring the demand response into the
17 market, and independence and capability on the part of the
18 body that administers the body. Others can chime in, but I
19 don't want to leave any doubt that I disagree -- that I
20 fully agree with the policy that Paul just mentioned.

21 MR. WELCH: Tom Welch, Maine. I think I agree
22 considerably with Paul on the notion that FERC needs to
23 reaffirm what I think it has said before, but which market
24 participants seem to have trouble hearing.

25 And that is an ISO or RTO really has to be

1 completely independent from any decisional influence by
2 market participants or any combination thereof. I think a
3 second piece related to what Michael suggested, making
4 whatever decisions it can, as expeditiously as it can about
5 particular market issues.

6 In a way, there may be converging tracks. I
7 mean, one way -- and, Pat, you mentioned this -- one way
8 that FERC is undertaking is trying to develop the standard
9 market design, sort of by national fiat. I think that
10 effort ought to be pursued vigorously.

11 The other way is to see if organizations can grow
12 up, which can, themselves, over a significantly wide
13 footprint, develop those. The way in which the NERTO effort
14 is going forward, I think, makes sense.

15 The first step is to, in essence, agree to have a
16 common market design with a single decisional authority over
17 it. The second step is whether you actually have to merge
18 institutionally to preserve the benefits of that. The
19 answer to that may or may not be obvious, but to the extent
20 that FERC can make decisions about particular issues.

21 I mean, what's the right structure of the
22 capacity market, what's the right way in which particular
23 financial relationships ought to work? That will both
24 facilitate the other effort, and at the same time, provide
25 some additional benefits to the people who are out there in

1 the markets right now.

2 CHAIRMAN WOOD: What's the forum for that to get
3 done, Tom?

4 MR. WELCH: I think the forum for the latter is
5 that FERC has already put out its own papers on standard
6 market design. I think it ought to crystallize those. If
7 it doesn't have a docket open, open it and say we think this
8 is the way it ought to work.

9 I think that on the capacity market, I think,
10 again, there is or ought to be a particular docket saying,
11 we think here is the good replacement for ICAP, and I think,
12 on the other track, I think what FERC ought to consider
13 doing is telling people in NERTO and other related
14 activities, to say here are some deadlines for achieving
15 certain benchmarks. If one of the benchmarks is a firm
16 agreement on keeping market design standard, pursuant to the
17 FERC rules and working out the details themselves, put those
18 forward, and perhaps acknowledging that the ultimate
19 question of whether or not there has to be a single
20 organization in order to preserve those benefits and achieve
21 some other institutional savings could be deferred until
22 some of the dust settles.

23 MS. HELMER: This Maureen, I guess, from the
24 left-hand side of the seam. I would accept all the things
25 that have just been said.

1 I would also add something I mentioned to
2 Commissioner Brownell earlier, which is to have the ISO
3 define the seams and the issues that are creating the
4 current seams, and really have some accountability to FERC
5 for resolving them under a set timetable. That would go a
6 long way.

7 Then in terms of the NERTO effort, again, we've
8 had a lot of conversation during these two hours about what
9 is driving the ISO to do something very quickly, and in our
10 estimation, not altogether ably.

11 Depending on who you listen to, it's either this
12 kind of tortured relationship between the New England ISO
13 and NEPOOL, or it's the direction they believe they're
14 taking from FERC in terms of this being the desired outcome,
15 and obviously both of those things are things that are
16 within your control.

17 So, again, I think some accountability on the
18 seams issues, moving forward, to get the independence at the
19 ISOs or whatever the organization ends up being, either
20 locally or combined, and then again looking west to us, the
21 idea that perhaps we could have common dispatch or shared
22 markets under larger umbrella organizations is something we
23 can do any organizational structure.

24 A and B, obviously, we need to get the standard
25 market design docket completed. That will greatly

1 facilitate this.

2 MS. BROCKWAY: This is Nancy from New Hampshire.
3 I think we agree with the comments that have been made.
4 I'll just add a couple:

5 In the list of seams, we would also want to look
6 at seams to the north and continue to have in a more focused
7 way than we have been able to so far, to have a discussion
8 with our northern neighbors.

9 In addition, we would all want the Commission to
10 consider what its legal authority may be or its other
11 persuasive powers, which we understand to be very great, to
12 achieve true independence for ISO New England. I don't know
13 about ISO New York; I don't know if they need it, but true
14 independence for ISO New England from the management and
15 market participants, for whatever time it exists, is at
16 least a function that's better.

17

18

19

20

21

22

23

24

25

1 MR. DWORKIN: Have all the states spoken up?
2 Elia, I'm not sure I heard Rhode Island in the last round.

3 MR. GERMANI: Michael, you haven't talked about
4 market monitoring which I guess we're in NECPUC are in
5 pretty much agreement.

6 MR. DWORKIN: It leads with a little opening
7 pretty strongly into some detail. First the larger picture
8 and then the detail.

9 I introduced Nora at a speech last week with a
10 compliment to her and to FERC overall by saying my
11 perception was that you didn't just want markets, you wanted
12 markets that worked. And to make the markets work, there
13 needs to be a set of rules, and rules need enforcement. In
14 this context, regulation isn't the enemy of competition,
15 it's really the necessary prerequisite. There needs to be a
16 sense of what the entitlements are, who owns them, how they
17 pass from player to player, what kind of information is
18 known, and how the trades are being done.

19 There is a word of praise I want to give for the
20 ISO New England here. I think that structurally, they have
21 set up something which is probably close to right. In the
22 last six months, they've begun to put something close to a
23 reasonable amount of resources into it and to develop some
24 rules. Yet I'm going to end with a challenge to them, and
25 to you, to make sure they do more.

1 A specific issue which has been raised by the
2 market participants of NEPOOL has been that they would like
3 to see the Market Monitoring Unit independent of the ISO,
4 and in fact controlled in one or another form by the Market
5 Participants Committee of NEPOOL. We have thought that that
6 is not an attractive model for two reasons.

7 One is negative, that since they are the people
8 who are selling into the market and profiting from high
9 prices or high volume, it didn't make sense to have them
10 controlling the body that was trying to create an effective
11 balance between supply and demand or buyers and sellers.

12 The second reason is we thought that the model
13 that the ISO has come up with, which consists of two parts,
14 one is an in-house group that has intimate day-to-day
15 knowledge of how the trades are going and that has the right
16 to report not just to management but to the board of
17 directors, complemented by an out-of-house hired independent
18 counsel who checks in monthly with a report and quarterly
19 with an analysis and has the right not just to go to the
20 board of directors but to FERC, is a structure that seems to
21 balance both the need for tactical oversight and some
22 operational and strategic thinking. It's one that we think
23 if given adequate resources and muscle can do the job a lot
24 better than an independent body which is controlled by the
25 market participants.

1 But we've always had one little footnote on this.
2 It's where we've said this is true if and only to the extent
3 that the ISO's board itself is independent of the market
4 participants. Otherwise, you don't gain the independence
5 you're seeking in this context.

6 The question of adequacy of resources is one that
7 we think they've begun to put some effort into. I know that
8 I am often asked whether FERC should be doing this or
9 whether the ISO should be doing it, and I'll say this is
10 another area where my perception is that for all practical
11 purposes, the ISO or the RTO is carrying out what is in
12 effect a delegated FERC function of making the market
13 perform well, and if they can't do it, you need to, but you
14 can't hand it over 100 percent anyway. You need to watch
15 carefully enough to know whether or not they're doing it
16 well. So you need a pretty serious commitment at the
17 federal level.

18 I will add that we have recently agreed to send a
19 letter to the ISO asking them about nine market practices
20 that are troubling. It turned out as we were drafting that
21 that we saw the letter that you sent to the Western Council,
22 and you wrote to the market participants asking them to
23 affirm whether or not they were doing it. We wrote to the
24 ISO asking whether they knew whether this was going on. The
25 ISO, when we talked to them about this, told us that it fit

1 well because they were actually actively already a step
2 ahead and had begun such a look and such an investigation
3 and were trying to think seriously about how to move forward
4 on this. And I really want to in a sense praise them on
5 that for moving before we nudged them because they care
6 about the issue.

7 And yet I also want to note that of the hundreds
8 of hours we spent with the ISO's boards of directors in the
9 last eight months, the amount of time devoted to merger
10 issues is probably six times the amount of time devoted to
11 trade practices of market participants. It's a sign of
12 where I think they're doing the best they can. They've got
13 a good structure. They're putting more and more resources
14 into it. I see a good faith effort and concern, and yet to
15 turn it from a nice effort by somebody at the beginning of a
16 learning curve to a serious effort by somebody who controls
17 it and has the expertise to make it real is a learning curve
18 that they will all be better off if they move quickly rather
19 than slowly on.

20 Do others want to chime in on the Market
21 Monitoring Unit concept? I touched both on general theory
22 and on the specific market participant proposal that we were
23 asked to comment on.

24 MS. HELMER: This is Maureen again. I would just
25 add that we still have a sticky question as to what role, if

1 any, the states play in market monitoring. I've always used
2 the analogy on the telephone side in 271 and the kind of
3 parallel responsibility, and I think the kind of trading
4 practices that have come to light in recent months only
5 fortify the idea that at least until we figure out how these
6 markets are really working, the more eyes and ears we have
7 looking at this stuff, the better, as long as we have a
8 cooperative working effort, as long as we understand where
9 our lines are and the places where it's appropriate for the
10 states' work feeds into the federal work.

11 And I'll add my compliments to Michael's that the
12 FERC has shown a real desire in establishing its Market
13 Monitoring Unit to really get its arms around a very serious
14 important issue. You know, we've seen some more issues that
15 have come up, not just in trading practices, but in the way
16 reference prices are set and how that affects mitigation in
17 the states. And the better we can figure out how to first
18 of all get the information we need so that we can lend our
19 eyes and ears and expertise, but second of all, how we then
20 share that information with the FERC, and then third of all,
21 how the FERC takes on those responsibilities and kind of
22 takes the football over the goal line, I think those are
23 real important issues as we move forward.

24 MR. WELCH: This is Tom Welch of Maine. I want
25 to support Maureen with one exception. Please don't suggest

1 that FERC import the 271 process into electricity. It's so
2 gruesome. But it might make sense to have some even
3 regularized if not formal way, because there are at least
4 four different public agencies -- FTC, DOJ, FERC and the
5 state commissions -- who all have a common interest in
6 identifying and eliminating both the existing and emerging
7 ways of making the markets act to the disadvantage of our
8 constituents. And if there were some way of pooling our
9 information in some way that wouldn't violate whatever legal
10 strictures we have, I think that would be extremely
11 valuable.

12 MR. DWORKIN: You could add the SEC. It's
13 probably worth touching on investor confidence.

14 MR. MEYERS: This is Ed Meyers speaking. Do you
15 think those -- I guess we've named six by now -- groups
16 should get together and determine a better way to measure
17 abuse of market power? Do we have the tools to measure the
18 abuse of market power right now?

19 MR. WELCH: I wouldn't suggest that we see as our
20 objective, you know, some replacement for the HHIs. I would
21 see it as more of an information clearinghouse. Frankly,
22 this is such a new market with such unusual characteristics
23 that the more tools we can bring to bear, the better. And
24 if some consensus emerges that will assist whatever Market
25 Monitoring Units are put in place in identifying and

1 mitigating improper behavior the better.

2 But I think the first step is just to get them
3 talking to each other. Because, frankly, I really don't
4 know. I mean, DOJ actually has an antitrust unit dedicated
5 to the Northeast market. I haven't spoken to them in two
6 years. but if we could get those people in a room and at
7 least share intelligence, I think that would be
8 constructive.

9 MR. DWORKIN: There's only one observation I
10 would add to Tom's other than mentioning its importance,
11 which is that pace is vital. And it's why I mentioned
12 investor credibility here. When DOJ's antitrust unit moves
13 at a pace measured in semi-decades and takes an entire, you
14 know, federal election cycle to decide whether to bring an
15 action, that's not a pace that matches the decisions that
16 investors make in which they can withdraw 40 percent of the
17 equity value of the California utilities in a month. They
18 can withdraw 90 percent of the equity value of a major power
19 trader in three weeks.

20 So there needs to be a mechanism in which there
21 is a very swift, almost essentially prior assurance of an
22 understanding of market abuse.

23 MR. RODGERS: Steve Rodgers on FERC staff again.
24 I wanted to just interject and ask our friends up in Canada
25 if they have any thoughts on what we've been talking about

1 here, in particular seams issues, common market issues,
2 standard market design.

3 MR. BROWN: Well, we're following it certainly
4 with great interest. We have a little group here at the OEB
5 that's studying the --

6 MR. RODGERS: I'm sorry. Could you please
7 identify yourself?

8 MR. BROWN: David Brown from the Ontario Energy
9 Board. We're following the issues and we have a little
10 group together studying the standard market design
11 whitepaper and so forth and communicating regularly with the
12 IMO on it. I don't know if I have any particular comments
13 to make at the current time. I don't think Quebec
14 representatives have anything?

15 MS. DUPOIS: No. This is Caroline Dupois from
16 the Quebec Energy Board. We're also following what's going
17 on, but we must admit it's not on our agenda as being a
18 priority. We know that Trans Energie has been closely
19 monitoring also what's been going on, but they have not
20 indicated to us what their plans are. So we're behind in
21 submitting in RTO matters, but we're following.

22 MR. MERONEY: This is Bill Meroney on FERC staff.
23 At the risk of returning to an old issue, I did want to ask
24 a general question about cost benefit. And I sort of
25 noticed that we didn't talk too much about the specifics of

1 the NERTO study. It's not that I want to talk about the
2 specifics, but I did perceive that in many respects it seems
3 as if this particular study didn't really speak all that
4 well to the issues or help the decision process. I think
5 someone even said that it may impede it to some extent. And
6 I guess I've heard similar remarks on similar studies, and
7 I'm wondering, one, if that seems generally true, and two,
8 how could you improve upon it? Because there seems to be
9 some need to make some assessments of benefits and costs of
10 these initiatives.

11 MS. BROCKWAY: This is Nancy Brockway. I would
12 just say one thing. I don't think it has impeded anything
13 if it raises serious concerns.

14 MR. MERONEY: I have somewhat the same reaction,
15 which is that the fact that it shows that there's not much
16 value to what had been perceived is very valuable, isn't
17 necessarily an impediment. It could be called
18 enlightenment. And the fact that the thing has serious, you
19 know, limitations. For example, this one doesn't even look
20 at capital costs at all and a 2 percent change in allocation
21 of a few billion dollars to rewire Manhattan would swamp
22 everything that's included in it.

23 Those are serious weaknesses. But it doesn't mean
24 it doesn't show you anything.

25 MR. DIAMOND: This is Steve Diamond from Maine.

1 I think the problem with the studies is that they're sort of
2 answering the wrong questions, at least for most of their
3 numbers. What the studies have done, and I think this is
4 true both of the FERC study and NERTO study, is not
5 identified pluses or minuses of having large RTOs. They
6 have identified the consequences of removing impediments to
7 trades across existing political boundaries.

8 If it is the case, as I have heard twice, that
9 FERC -- and I happen to agree with FERC on this -- thinks
10 it's a good idea to remove the impediments created by market
11 and political boundaries, then most of what is described for
12 good or ill in those studies is going to take place. So the
13 studies really don't help you answer the additional question
14 of whether having larger organizational structure is going
15 to help that, hurt that or cause some other issues to come
16 to pass.

17 So I just think they're asking the wrong
18 question. I'm not sure the question -- and to me, the
19 question of whether or not one organization or two is more
20 likely to keep a consistent set of rules is a pretty trivial
21 one with an obvious answer. I think the question of whether
22 you move from the New England ISO and its particular history
23 to a NERTO with uncertain governance is a more difficult
24 question which can only be answered empirically.

25 MS. HELMER: This is Maureen. I would go back to

1 something Nancy said earlier which is that one of the real
2 benefits of a bigger footprint as opposed to just dealing
3 with seams issues is regional transmission planning. And,
4 you know, we keep talking about, well, this study is fine
5 for the constraints it talks about. They're not just
6 political strengths, they're also physical constraints.

7 And one of the things that we would look toward a
8 larger footprint doing is eliminating physical constraints
9 over time. And there's almost no consideration of that in
10 this study. So I would look towards that as well. A lot of
11 these other benefits, as we've said repeatedly on this call,
12 could be done under almost any organizational structure. A
13 single RTO, it was our hope at some point, would simply make
14 those things happen faster.

15 MR. MERONEY: I didn't mean to give such a
16 negative spin on my question. Certainly it has the benefit
17 of showing certain things that I think the FERC study showed
18 as well. So what I'm hearing is that setting the context
19 right and recognizing the limitations of the study has
20 considerable value, but it's important to recognize what it
21 doesn't do as much as what it does.

22 MR. DIAMOND: This is Steve Diamond from Maine.
23 I was just going to weigh in. I think one of the things
24 that the study does is it indicates that there has to be
25 more explicit recognition and a means for expressly dealing

1 with the cost shifting issue. That was the thrust of my
2 comments earlier, that it's a little hard to take this to
3 the New England legislators and say there's something good
4 about this in its present fashion. And so I think it puts
5 cost shifting on the table.

6 And as Tom has said, whether you do the merger or
7 you don't do the merger, and Pat Wood asked earlier, you
8 know, what should FERC do? I think FERC has already
9 indicated what its objectives are that are not negotiable,
10 which are basically breaking down the seams through standard
11 market design and eliminating export fees. And I'm not
12 going to try to talk anyone out of that.

13 I think what's emerged from this call is the
14 question of so far the ISOs have been encouraged to address
15 that through creating a larger organizational structure, and
16 one thing FERC might do is to invite them to address that
17 alternatively. One is through creating a larger
18 organizational structure by full integration, and another is
19 to say how do we get there if we don't do that, and what are
20 the benefits and disadvantages isolating out the full
21 integration?

22 But I think whether we do the full integration or
23 don't do the full integration, the cost-benefit studies
24 raise the cost shifting issue, and I think that that has to
25 be more expressly put on the table.

1 MR. MEYERS: This is Ed Meyers. I just wanted to
2 make sure that we covered the entire footprint issue and
3 bring in PJM for a second and the cost shifting issues
4 related thereto. And that is the cost benefit study on page
5 41, I mean it's marked confidential, and we've been talking
6 about it. I assume we can talk about it. But it talks
7 about the results of PJM and if they are added to the New
8 York-New England results under NERTO, whether the savings
9 drop. And I won't give the figure in case there is a cost
10 savings, but it's a considerable amount. And I wonder if
11 anybody can speak to the PJM implications of the cost
12 benefit study and what this means from your perspectives as
13 state commissioners. Maureen's in the middle. Do you want
14 to go first?

15 MS. HELMER: Yes. I feel like the middle of a
16 ham sandwich. It goes back to my earlier comments that
17 broader for us didn't just mean dealing with our neighbors
18 to the northeast, it meant dealing with our neighbors to the
19 west, and as Nancy pointed out, to the direct north as well.

20 As we've also said repeatedly on this call, there
21 are a lot of things that we can do to bring the benefit of
22 these other markets that we can do perhaps short of mergers,
23 since PJM seems to have taken itself out of that business.

24 I don't know statistically how that bears on the
25 analysis as to how benefits flow to the northeast, but it's

1 certainly effective for New York.

2 MR. DWORKIN: I would add that in the minds of
3 the -- well, certainly say in my mind, an issue that has
4 been critical to potential merger with PJM has been
5 operational reliability. There are 50-gig systems in the
6 world. There are not many that are bigger than that.
7 Single mode dispatch for a system that size would be a big
8 gamble.

9 Now there are lots of intermediate steps one
10 could take, and it may be disaggregated functioning under a
11 single rule-setting body could eventually get there. But
12 the model of a single type power grid of that scale is a
13 scary one, and I am cautious enough to say that I've hung
14 around engineers for a real long time and I'd like to see
15 them practice with something other than the fundamental
16 economic well being of 50 million people. It is a
17 significant issue that touches on in a way that, you know,
18 the study of potential benefits just doesn't really address.

19 MS. BROCKWAY: This is Nancy. To our mind, one
20 of the fundamental problems, the larger the footprint in the
21 sense of the more areas with local concerns that have to be
22 dealt with that are brought in, the more diffuse becomes the
23 role of the states.

24 Now from the point of view of FERC, that might be
25 good, because, boy, I'm sure we're a pain in the neck. On

1 the other hand, I think that we are a necessary pain in the
2 neck and that really when you're thinking about footprints,
3 you want to consider can we do system expansion planning in
4 a way that could actually work? And in order for it to
5 work, it's got to be sellable to the folks at home. Perhaps
6 one can strong-arm to a certain extent, but there's a limit
7 to that even if you have federal jurisdictional siting
8 authority.

9 So you want to bring us in and have us as
10 partners. And the more of us there are in the room, the
11 less agreement you're going to get. I think it's like
12 economists. So you want to have a situation in which you
13 can meaningfully gather our input and have it useful to you.
14 I have developed a proposal for a northeast electricity
15 resource expansion committee that would work with a NERTO or
16 could work within the ISOs. But it becomes very unwieldy if
17 you expand it to 20 states, for example. So I think that
18 there's some natural institutional size that you might want
19 to consider and that you'd be better off dealing with the
20 seams issues straightforwardly rather than trying to gin up
21 some kind of an institution to deal with them once you start
22 talking a very big footprint.

23 MR. DWORKIN: I know we're getting near the end.
24 I'm not sure whether it's worth running around to each state
25 to see if there's a summary comment.

1 MR. ARTHUR: David, this is Glenn Arthur. Going
2 back to an issue about having a single dispatch. I'm not
3 necessarily sure that we'll ever get to that point. I think
4 there may be a primary dispatch point, but I think just as
5 we have here in New England where we have secondary
6 geographical dispatch points that tie into a primary and
7 take orders from them. And I don't really foresee somebody
8 in New York or somebody in PJM dispatching all the
9 generation in the northeast, PJM and New York and Canada. I
10 don't think that will happen, so I'm not sure that's an
11 issue.

12 And to go back to your summary question, I think
13 the ISO New England needs to have some assurance from FERC
14 that they're not going to get an edict telling them what to
15 do about an ISO or Northeast RTO. And I think we need to
16 spend our time on the standard market design and solving the
17 seams problems between all of the boundaries and in fact PJM
18 also, which I think we're working towards, at least in the
19 large picture and probably in the small picture with New
20 York, I think there's a lot of work going on in that area.
21 But that's going to take a couple of years before we get
22 those two systems lined up so that they can talk together
23 and solve these seam problems and have a standard market
24 design. That's Connecticut.

25 MR. DWORKIN: Do any of the other states want to

1 chime in?

2 (No response.)

3 MR. RODGERS: We're about out of time. Unless
4 there's any concluding comments, I'll go ahead and sign us
5 off. Thank you very much for your very frank remarks. I
6 know it will be helpful to the Commission and staff here at
7 FERC as we consider what to do in the Northeast. We
8 appreciate very much your openness. thank you very much and
9 have a good day.

10 (Whereupon, at 12:00 p.m. on Tuesday, May 28,
11 2002, the New York/New England Regional RTO Panel meeting
12 adjourned.)

13

14

15

16

17

18

19

20

21

22

23

24

25